

Federal Communications Commission

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DISPATCHBefore the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-253
Table of Allotments,)	RM-8962
FM Broadcast Stations.)	
(Bainbridge, Georgia))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 27, 1997

Released: September 5, 1997

By the Chief, Allocations Branch:

1. At the request of Chattahoochee Broadcast Associates ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 20904 (1996), proposing the allotment of Channel 270A to Bainbridge, Georgia, as the community's second local FM service. Comments were filed by the petitioner reiterating its intention to apply for the channel, if allotted, and by Paxson Tallahassee License, Inc. ("Paxson"). Reply comments were filed by the petitioner.¹

2. Paxson is the licensee of Station WXSX, Quincy, Florida. Paxson opposes the allotment of Channel 270A to Bainbridge because it conflicts with the application (BPH-961230IA) which it filed to implement the upgrade of Station WXSX from Channel 268C2 to Channel 268C1, as granted by Report and Order, 11 FCC Rcd 8772 (1996). Paxson states that the pending application only requests that Station WXSX's license be modified to specify operation on Channel 268C1 with an increased effective radiated power of 83 kilowatts. Further, it goes on to state that the transmitter site specified in the application is the station's presently licensed transmitter site and that no change in the site is either pending or contemplated.

3. In reply comments, petitioner argues that the Commission's Rules with respect to conflicts between petitions and applications is clear. Where, as here, the application was filed after the petition but prior to the close of the initial comment period, the application will be given

¹ On July 23, 1997, after the record closed, Clyde Scott, Jr., d/b/a EME Communications ("EME"), submitted a proposal that Channel 221A be substituted for Channel 251A at Dawson, Georgia, and that Channel 251A be allotted to Bainbridge, GA. EME Communications states that it will apply for Channel 251A at Dawson, it allotted. It submits that adoption of this proposal would negate the conflict between Paxson's pending application for Channel 268C1 at Quincy, FL, and petitioner's proposal for an FM channel allotment at Bainbridge. EME's pleading is an untimely filed counterproposal in this proceeding in that it introduces a new community to the proceeding and thus must have been filed by the close of the initial comment period. Therefore, the pleading will not be considered further. In light of this action, the petitioner's Motion to Strike EME's late-filed pleading is moot and will not be discussed.

comparative consideration under existing allocation precedent.² This precedent, according to the petitioner, generally finds that the public interest is better served by the allotment of a new FM channel, as it represents a new primary service, over an applicant's request for a specific transmitter site, which, unless shown otherwise, serves only the applicant's private interests, citing Andalusia, Alabama, 49 FR 32201 (1984). In this case, petitioner points out that Station WXSX was upgraded from Channel 268C2 to Channel 268C1, at the reference coordinates requested by Paxson. Although it has now filed an application specifying its present transmitter site, rather than the coordinates requested in the rule making, petitioner states that Paxson has made no attempt to demonstrate that use of its present transmitter site will provide a service which is to be preferred over a new primary service at Bainbridge.

4. We believe the public interest would be served by allotting Channel 270A to Bainbridge since it could provide the community with its second local FM service. Paxson has provided no showing that the use of its presently authorized transmitter site represents anything more than a site preference. No showing has been made that use of the station's present site would provide a benefit to the public that would outweigh the provision of a new service at Bainbridge. Indeed, it only states that its pending application specifies its present transmitter site rather than the site requested in the petition for rule making for Channel 268C1 at Quincy, and that it does not intend to request use of a different transmitter site. Thus, Paxson has failed to show that the continued use of its present transmitter site provides any public interest benefit whatsoever. Nor has Paxson shown that the transmitter site which it requested in the rule making which allotted Channel 268C1 to Quincy is unavailable and that there are no other transmitter sites which can be utilized. Therefore, in accordance with Commission precedent, we will not deny the provision of an additional aural service at Bainbridge in favor of the use of a preferred site by Station WXSX.³ See Las Vegas, Nevada, 51 FR 9453 (1986) (applicant's site preferred over new allotment because it would provide service to an area which received only one aural service) and Dunn, Fuquay-Varina, Hope Mills, Topsail Beach and Williamston, North Carolina, 4 FCC Rcd 2301 (1989).

5. Channel 270A can be allotted to Bainbridge in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.⁴

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 20, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect

² See Conflict Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992), recon. granted in part and denied in part, 8 FCC Rcd 4743 (1993).

³ In this regard, Paxson will be permitted to amend its pending application without loss of cut-off protection to specify a non-conflicting site or directional antenna.

⁴ The coordinates for Channel 270A at Bainbridge are 30-54-30 North Latitude and 84-34-30 West Longitude.

to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Bainbridge, Georgia	247C, 270A

7. The window period for filing applications will open on October 20, 1997, and close on November 20, 1997.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau